IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO.626 OF 2000

Sanjiv Kalidas Sarkar,
Life Convict- 11282
At present Yeravada Central
Prison, Pune-411 006. .. Appellant
(orig.accused)

V/s

The State of Maharashtra .. Respondent.

Mrs. Revati Mohite-Dere, Advocate-appointed for the appellant.

Mrs. P.H. Kantharia, A.P.P. for the respondent.

CORAM : V.G.PALSHIKAR &
ANOOP V.MOHTA, JJ.

DATE : 7TH SEPTEMBER, 2004.

ORAL JUDGEMENT (PER ANOOP V. MOHTA, J.)

1. The appellant-accused was convicted under section 302 of Indian Penal Code and by the impugned judgment and order dated 27/3/2002 was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 1000/- and indefault to suffer rigorous imprisonment for one month. Therefore, this appeal against the order of conviction.

2. Two Police Officials had witnessed the offence/murder of Kalykumar Ramayya Devendra,

(hereinafter "deceased") committed by the appellant on 27/4/1997, at about 12.10 hours on the divider on Guru Nanak Cross Road between Pushpa Narsi Park and Bailal Patel Ground, Juhu Scheme Vile Parle (West), Mumbai. On 27/4/1997 at about 11.55 hours, a unknown person, informed telephonically, at Juhu Police station, about the quarrel between two persons at the junction of P.M. Road. One Madhadeo Surve, P.S.I. attached to the said police station, P.W.1, who was on duty as Station House Officer along with two police constables including P.W.2, Vithal Jadhav rushed to the spot in the autorickshaw. As they noticed the crowd at the place, they rushed towards the crowd, where the quarrel was going on. However.before the crowd reached to the accused, the accused hit the deceased with a cement block on his head. Thereafter the accused started running from the spot. However, he was caught by the P.W.1 and 2 after chasing him. The deceased was bleeding profusely and was in an unconscious stage. The deceased was thereafter sent to Cooperage Hospital along with Police Constable Bk.No. 27387. The accused disclosed his name and also disclosed that there was enmity between him and the deceased. The accused, thereafter, was taken to the Police Station. P.W. 1

lodged the complaint Exh.6 in June Police Station. The offence at the relevant time was registered under section 307 of Indian Penal Code, which was lateron modified under section 302 as the injured succumbed to the injuries. The statement of the injured could not be recorded as he was not in a condition to give the statement as informed by the Doctor on duty. The panchanama was drawn and cement stone, plain soil and blood stained soil from the spot were seized and labelled. The police had drawn inquest panchanama, collected the clothes of the deceased and sent the dead body for the post mortem. The police seized the clothes of the accused under panchanama Exh. 12 in presence of panch witness P.W. 4, Ashok Kumar Tarkant Pande. The accused was sent to the Medical Officer for collecting the blood sample. The clothes of the accused, as well as, of the deceased, earth samples, stone and the blood sample were sent to the Chemical Analyser and obtained the C.A report.The statements of the other persons were also recorded.

3. The trial proceeded as the accused had denied the charges as framed.

4. The prosecution has examined 8 witnesses, in support their case. There was no defence witness examined. In the statement under section 313 of Cr.P.C., the accused admitted his presence on the spot on the day of incident. He admitted his blood stains on the clothes. He also admitted the incident and the death of the deceased in the hospital thereafter.

5. The learned Additional Sessions Judge, Greater Bombay, after considered the material, as well as, the evidence placed on the record held that the deceased Kalyakumar Ramayya Devendra, died homicidal death due to the injuries received by him on 27/4/1997. He further held that the accused on 27/4/1997, at about 12.10 hours committed the murder, by knowingly and intentionally, assaulting the said deceased with cement block and thereby, committed the offence punishable under section 302 of I.P.C.

6. Heard advocates for the parties. We have gone through the evidence, documents and impugned Judgment and order in detail. We see no reason to interfere with the reasoned finding given by the learned Sessions Judge, as the same is within the frame work of the law,

and the record of the case. The two eye witnesses P.W.1 and P.W. 2, read with corroborative evidence, and circumstantial evidence are sufficient to maintain the conviction order, and imposition of life imprisonment to the accused. The above incident was witnessed by P.W.1 and P.W.2, as on the telephonic information, which was recorded and were noted by P.W.7, they rushed towards the area and reached to the spot in question, after noticing the gathered crowd. However, before they could intervene, they saw that the accused immediately took up cement stone and hit the deceased Kalya Kumar on his head, in their presence. The accused thereafter was caught by P.W.1 and P.W.2, as he started running from the spot. The panchnama of the spot, articles, clothes and blood stains dated 27/4/1979 Exh.9 and panchanama of deceased's clothes Exh.10, through P.W.4 and panchanama of clothes of the accused dated 27/4/1979, Exh.12 are the corroborative evidence to link the chain of events against the appellant,. This evidence remained un disturbed. The post-mortem note, Exh.14, is also proved by Dr. Rambhau, P.W.5, including chemcial analyser's report of the blood group, with no alcohol, (Exh.15) of the accused. The prosecution has successfully proved the spot panchanama through the panch witnesses. The

prosecution further proved, by examining P.W.4 Ashokkumar, the seizure of clothes, of the accused through Exh.12. This witness also remained intact.

7. The post-mortem report has been proved by P.W.5, Dr. Rambhau, who deposed, based on the postmortem report, that on the dead body there were 11 injuries. The main injury was on the head and on the face of the deceased. He further endorsed that the deceased died homicidal death. There was no much challenge to the chemical analyser report. The injuries were fresh within 24 hours. The post mortem was done within 24 hours of the incident. The defence advocate could not bring in the cross-examination, anything contrary. The prosecution has also proved that the deceased died because of injuries caused to him. It could be caused by article 2 (cement stone) seized in this case.

8. Another Doctor, P.W.6 Dr. Kumar of the Cooper Hospital has also supported the injury treatment papers pertaining to the deceased Kalya, Exh.18. He stated that the injured was admitted in Cooper Hospital on 27/4/1997, at about 10.45 p.m. and died within 45 minutes on the very same day. The only issue was raised

about the non supply of Exh.18 to the patient. This was also independent witness and his deposition was based on the treatment papers Exh.18 maintained by Cooper Hospital, in the ordinary course of hospital business and function. The said treatment papers reflect "assault over head by hitting huge stone". Therefore, this witness has also supported the prosecution case, in so far as the injury, its treatment and death of the deceased, on 27/4/1997 itself. This also shows the unconscious condition of the deceased.

9 . The prosecution has further examined an investigating officer, Shri Bansidhar Shirsath, P.W.7 and Shri Jadhav, P.W. 8 and further proved the receipt of the telephonic information and instructions thereafter to the staff to proceed towards the spot and hospital, recording of the complaint, statements and drawing of the spot panchanama. P.W.8 who took the charge of the matter, later on , denied the suggestion that he did not record the statement of eye witnesses and the accused was falsely implicated. In the present case the said information and necessary entry are also proved. Merely, because of non examination of autorickshawala, independent witnesses and necessary

receipt from the autorickahswala of the fare, that itself cannot be the reason to overlook the other material and evidence led by the prosecution in support of their case. The prosecution has taken care by filing report Exh.21 to show that all other eye witnesses were not available. Earlier investigation officer had recorded the statement of three persons who were used to-do the business on handcart near the place of the incident. The accused, in fact in his statement under section 313 of Cr.P.C., admitted that these three persons were doing business on the handcarts. The evidence, and the report placed on the record shows the efforts were taken by the prosecution to bring these and eye witnesses before the Court but they left the respective place. However, in the present case, according to us, as two eye witnesses, are police officials, there is no reason to disbelieve these eye witnesses, merely because they are police officers. Their evidence cannot be disbelieved. The defence advocate could not bring anything on the record to disbelieve the evidence of these witnesses. The appellant-accused unable to place on the record to bring any evidence in justification of their defence or any plea. The evidence of P.W.1 and 2 read with evidence of

P.W.7 and P.W.8 and other corroborative evidence shows that these eye witnesses have given a true fact of the incident before the Court. There was nothing argued to show that the accused was falsely implicated in the matter. The appellant-accused unable to prove his case that he was not at all present on the spot. Therefore, looking to the evidence and material placed on the record it is difficult to disbelieve the prosecution case which is corroborated by the medical evidence.

10. The learned Counsel appearing for the appellant could not point out any substantial defence raised and proved by the accused on the record. The defence lawyer unable to destroy the prosecution case.

11. The prosecution according to us has proved that the accused had hit the deceased with cement block and caused injuries which resulted into his death. Intentional reckless assault was with full knowledge and keeping in mind the consequences. The injury caused by the accused, for want of any evidence or any material reflects clear intention to kill the deceased. No other defence or circumstantial or any provocation was proved or placed. Merely, because there was a quarrel , that

by itself cannot be the reason to overlook the other circumstances which proved the assault by the appellant. Admittedly, the accused had hit the deceased in cruel and unusual manner on his head, a vital part of the body. Therefore, the basic ingredients of Section 302 of Indian Penal Code justifies to maintain the order of conviction.

12. Looking to the facts and circumstances placed on record, and as, proved by the prosecution in support of their case, we see there is no reason to interfere with the conviction order and imposition of life imprisonment and other related consequential order. There are no mitigating circumstances to reduce the proposed punishment.

. In view of this, the appeal is dismissed.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]